Remarks

Claims pending in this application are claims 1-18.

1. Restriction Requirement:

The claims in this application are subject to restriction into one of three groups, as follows:

I. Claims 1-5 and 14-17, drawn to a bone tendon bone graft, classified in class 623, subclass13.17.

II. Claims 6-13, drawn to a method of conducting orthopedic surgery, classified in subclass 128, subclass 898.

III. Claims 18, drawn to a tool, classified in class 606, subclass 73.

In order to be responsive, election of claims 1-5 and 14-17 (group I) is hereby made with traverse, for examination on the merits.

It is stated that the claims of group II and I are related as a process of making and the product made. The Examiner has stated that the product, as claimed, can be made by a materially different process such as connecting a bone graft from another patient or genetically creating the bone in the laboratory. The Applicant respectfully traverses the restriction requirement on the following grounds. First, the specification clearly states that the implant is "...preferably isolated from the knee of a donor." Pg. 4, Ln. 1 It is not clear how "connecting a bone graft from another donor" falls outside the scope of the current disclosure to describe a materially different process for making the product. In either case a bone sample is obtained from a donor. Second, assuming a bone were "genetically created" in a laboratory, it is unclear how this bone, without further processing, would encompass the current implant which comprises "one or more tendon portions ***and*** one or more bone portions." Pg. 3, Ln. 31 Either way, Applicant assert that "genetically created" bone used as a bone block in accordance with the teachings herein is within the claims of group I. Thus, the ground for this restriction is considered pretextual in that the

Examiner has failed to demonstrate a difference in the source of the bone used in the present implant, or how a "genetically created" ***bone***, without further processing, is materially the same as the bone/ tendon/ bone of the current invention. Reconsideration and withdrawal of this ground for restriction is therefore respectfully requested.

It is further stated that claims of groups II and III are related as a process and apparatus for its practice. The Examiner has stated that the process as claimed could be practiced by another and materially different apparatus such as a scalpel. However, no evidence has been presented to demonstrate that anyone would employ a scalpel, which is specifically adapted for cutting soft tissues, in the current process to remove large blocks of bone. A traditional scalpel has a semi-rigid blade with a sharp edge, designed for cutting soft tissue, not for cutting through hard cancellous or cortical bone. Using a scalpel to cut segments of hard bone would immediately reduce or compromise the scalpel's utility. Further, the mechanical strength required of a bone extraction tool would make using a thin, flexible scalpel blade impractical. In contrast, the disclosed BTB harvesting device is specifically designed to quickly and efficiently cut through hard bone to retrieve a sample. One end of the device is designed to engage a drill to rapidly rotate the device, while the other end has teeth disposed thereon to cut through the bone. The teeth are positioned to have a rake angle , which prevents bending or breaking during rotational cutting of the bone sample. Creating the present implant is expedited through use of the disclosed harvesting device. Thus, a clear relationship between the product and apparatus exists. The two are connected in design, operation and effect, and are useable together. Thus, one would not obtain the same results by substituting a scalpel in the present process. Therefore, reconsideration and withdrawal of this ground for restriction is respectfully requested.

Applicant invites the Examiner to call the undersigned if clarification is needed on any aspect of this response after entrance and consideration of the remarks presented herein.

Respectfully submitted,

Timothy H. Van Dyke
Patent Attorney
Registration No. 43,218
Phone No: 407-228-0329
Address: 1630 Hillcrest Street
Orlando, FL 32802